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Attorneys for Plaintiff, Counterclaim Defendant WYNN LAS
VEGAS LLC d/b/a WYNN LAS VEGAS

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

GGW BRANDS, LLC, et al.

Debtors.

WYNN LAS VEGAS LLC dba WYNN LAS
VEGAS, a Nevada limited liability company,

Plaintiff, Counterclaim
Defendant

v.

GGW DIRECT, LLC, a Delaware limited
liability company; GGW BRANDS, LLC, a
Delaware limited liability company; GGW
EVENTS, LLC, a Delaware limited liability
company; MANTRA FILMS, INC., a
suspended Oklahoma corporation; BLUE
HORSE TRADING, LLC, a California limited
liability company; PEPE BUS, LLC, an inactive
Montana limited liability company; SANDS
MEDIA, INC., a revoked Nevada domestic

Adversary Case No.: 13-01050-MKN

Chapter 11

**MOTION FOR JUDGMENT ON THE
PLEADINGS PURSUANT TO FED. R.
CIV. P. 12(C), OR IN THE
ALTERNATIVE, MOTION TO
STRIKE PURSUANT TO FED. R. CIV.
P. 12(F); MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

corporation; JOSEPH R. FRANCIS, an individual; DAVID R. HOUSTON, an individual; and DAVID R. HOUSTON, LTD., a Nevada professional corporation, doing business as THE LAW OFFICE OF DAVID R. HOUSTON,

Defendants

GGW GLOBAL BRANDS, INC., as successor in interest of certain assets of PEPE BUS, LLC

Counterclaimant and Crossclaimant

v.

WYNN LAS VEGAS LLC d/b/a WYNN LAS VEGAS

Counterclaim Defendant

-and-

GGW DIRECT, LLC; GGW BRANDS, LLC; and GGW EVENTS, LLC

Crossclaim Defendants

NOTICE OF MOTION

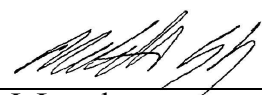
Wynn Las Vegas, LLC d/b/a Wynn Las Vegas (“Wynn Las Vegas”) hereby moves (the “Motion”) pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure and Rule 12(c) of the Federal Rules of Civil Procedure to dismiss the entirety of *the Answer to Complaint, Counterclaim, and Crossclaim by GGW Global Brands Inc.* [Docket No. 27] (the “Global Brands Answer”), filed on August 14, 2013, on the grounds that GGW Global Brands, Inc. is improperly attempting to participate in this action as a nonparty, and has failed to file a formal motion for intervention as is required. In the alternative, Wynn Las Vegas hereby moves pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure and Rule 12(f) of the Federal Rules of Civil Procedure to strike the entirety of the pleading on the same grounds as an improper defense and pleading.

This Motion is supported by the following Memorandum of Points and Authorities and the pleadings and papers on file.

Dated: September 10, 2013

BROWNSTEIN HYATT FARBER SCHRECK,
LLP

By:



Mitchell J. Langberg

Attorneys for Wynn Las Vegas, LLC, d/b/a
Wynn Las Vegas

MEMORANDUM OF POINTS AND AUTHORITIES

GGW Global Brands, Inc. (“Global Brands”), an entity claiming to be the successor-in-interest to one of the named defendants in this action, Pepe Bus, LLC, filed *the Answer to Complaint, Counterclaim, and Crossclaim by GGW Global Brands Inc.* (“Answer and Counterclaim”) on August 14, 2013. Global Brands itself is not a part to this action, and none of the existing parties have sought leave to join Global Brands as a party.

A Rule 12(c) motion for judgment on the pleadings is properly granted when there is no issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). Under Federal Rule of Civil Procedure 12(f), the Court can strike any improper defense or any improper matter. *F.D.I.C. v. Johnson*, 2:12-CV-00209-KJD, 2012 WL 5818259 (D. Nev. Nov. 15, 2012) (referencing *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 432–33 (9th Cir. 2011)).

The law is clear: if a third party is not a party to an action, and if none of the existing parties seek leave to join the third party through an appropriate joinder device, the third party can only participate in the action by filing a motion to intervene under Rule 24 of the Federal Rules of Civil Procedure (as applicable pursuant to Federal Rules of Bankruptcy Procedure 7024). *Parker-Hannifin Corp. v. Samuel Moore and Co.*, 436 F. Supp. 498, 500 (N.D. Ohio 1977); *Paine, Webber, Jackson & Curtis Inc. v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 564 F. Supp. 1358, 1371 (D. Delaware 1983); *Spangler v. Pasadena City Board of Education*, 552 F. 2d 1326, 1329 (9th Cir. 1977) (it was error to allow third parties who had not formally intervened to participate in legal proceedings).


Because Global Brands is not a named party in this proceeding, has failed to be properly joined to this action, and has failed to file a motion to intervene, the entirety of the Answer and Counterclaim is improper. Based on the foregoing, Wynn Las Vegas requests that the Court either dismiss the entirety of the Answer and Counterclaim under Rule 12(c) of the Federal Rules

1 of Civil Procedure, or in the alternative, strike the entirety of the Answer and Counterclaim under
2 Rule 12(f) of the Federal Rules of Civil Procedure.

3 Dated: September 10, 2013

BROWNSTEIN HYATT FARBER SCHRECK,
LLP

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5 By:



Mitchell J. Langberg

6 Attorneys for Wynn Las Vegas, LLC, d/b/a
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